

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

MARK AARON FOSTER, *Petitioner*.

No. 1 CA-CR 14-0819 PRPC
FILED 11-3-2016

Petition for Review from the Superior Court in Maricopa County
No. CR2012-006243-001 DT
The Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Mark Aaron Foster, Florence
Petitioner

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MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Chief Judge Michael J. Brown joined.

CATTANI, Judge:

¶1 Petitioner Mark Aaron Foster petitions this court for review from the summary dismissal of his petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 Foster pleaded guilty to theft of means of transportation, conducting a chop shop, misconduct involving weapons, and possession of narcotic drugs for sale. The superior court sentenced him to concurrent terms of imprisonment, the longest of which is five years, to be followed by three years' probation. Foster then filed a pro se of-right petition for post-conviction relief, arguing that the searches of his home and vehicle violated the Fourth Amendment, that the convictions were not supported by sufficient evidence, and that his trial attorneys were ineffective. The superior court summarily dismissed the petition, and this petition for review followed.

¶3 Foster again argues that the searches of his home and vehicle were illegal and that both of his trial attorneys were ineffective in a number of ways. But, by pleading guilty, Foster waived all non-jurisdictional defenses, errors, and defects that occurred prior to the plea. *State v. Moreno*, 134 Ariz. 199, 200 (App. 1982). This waiver includes alleged deprivations of constitutional rights, *Tollett v. Henderson*, 411 U.S. 258, 267 (1973), and all claims of ineffective assistance of counsel not directly related to the entry of the plea. *State v. Quick*, 177 Ariz. 314, 316 (App. 1994). Although Foster argues counsel at his plea hearing was ineffective because the evidence was not sufficient to support his pleas, the record reflects the factual basis for each plea was more than sufficient.

¶4 Foster also argues that post-conviction relief is warranted because of a conflict of interest between him and both of his trial attorneys, as evidenced by the fact that counsel ultimately moved to withdraw from representation. But Foster's first counsel withdrew due to Foster's failure to pay his fees approximately ten months *before* Foster pleaded guilty.

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Foster's second counsel withdrew two months *after* formal entry of Foster's plea at sentencing (when the only remaining issue was restitution) because Foster threatened legal action and/or a bar complaint. Because neither alleged conflict directly related to entry of the plea, Foster's claims are waived.

¶5 We decline to address any additional issues Foster presents in his petition for review because he did not first raise them before the superior court. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii); *see also* *State v. Bortz*, 169 Ariz. 575, 577 (App. 1991).

¶6 Accordingly, we grant review but deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA